IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/12/2003

CORAM

THE HONOURABLE MR. JUSTICE N. DHINAKAR
and
THE HONOURABLE MR. JUSTICE A. KULASEKARAN

O.S.A. No. 362 of 2003
and
C.M.P. No. 15995 of 2003

LIC Housing Finance Limited
rep. by its Regional Manager
15, Abdul Razaque Street
Saidapet, Chennai 15 ... Appellant

-Vs-

Futnani Diary Farm
rep. by its Managing Director
Madhusudan Futnani
No.146, Sembudoss Street
Chennai 600 001 ... Respondent

Appeal Under Section 36 Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent against the Judgment and Decree dated 25-09-2003 passed in application NO. 900 of 2003 in C.S. No. 372 of 1998 .

!For Appellant : Mr. G.N. Sridharan

^For Respondents : Mr. R. Thiagarajan

:JUDGMENT

(Judgment of the Court was delivered by A. KULASEKARAN, J)

This appeal is directed against the order of the learned single Judge allowing the application to condone the delay of 533 days in filing a petition for setting aside the exparte preliminary decree dated 30 -07-2001 passed in C.S. No. 372 of 1998.

2. The respondent herein has engaged his previous counsel for entering appearance and entrusted vakalath duly signed by him on 24-09-2001 . He was under the bonafide impression that the counsel would take care of the

case. Whereas, the previous counsel has presented the Vakalath only on 19-09-2002 and even prior to the signing of the vakalath, he was set exparte on 30-07-2001, which he was not aware. The learned single judge felt that though the respondent was not vigilant, his failure should not have been made a ground for ousting him from the litigation, which involves the property worth several crores.

3. The learned single Judge, after affording opportunity to the parties and relying on the decision of the Apex Court reported in (M.K. Prasad Vs. P. Arumugam) (2001) 6 SCC Page No.1761 has exercised discretion to advance substantial justice since found that the property involved belonged to respondent worth about several crores and condoned the delay subject to payment of costs of Rs.50,000/-. It is an admitted fact that the said costs was received by the appellant herein without any protest.

4. It is also seen from the records that after receipt of the cost, even without giving any notice of protest, the present appeal has been filed. We are of the view that the learned single Judge has rightly exercised his discretion and allowed the application. We do not find any infirmity in the order impugned.

Hence, the appeal fails, liable to be dismissed and accordingly dismissed. No costs. Connected CMP is closed.

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